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NationsBank

December 15, 1997

Cynthia L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street S.W.
Washington, DC 20227

Re: RIN 1510-AA56
Management of Federal Agency Disbursements

Dear Ms. Johnson:

NationsBank Corporation ("NationsBank") is pleased to respond to the Department of the Treasury's ("Treasury") request for comments on the proposed rulemaking relating to management of Federal agency disbursements. NationsBank has primary retail and commercial banking operations in 16 states and the District of Columbia. NationsBank is the fifth largest bank holding company in the United States as of September 30, 1997, with total assets of $242 billion.

We appreciate the task set before the Treasury to implement the requirements of Phase Two of the conversion of Federal payments from checks to electronic funds transfer ("EFT"). Our comments addressing the Treasury's specific questions are attached.

We also appreciate this opportunity to comment. Should you have any questions concerning our comment, please contact Richard Lafferty, Assistant General Counsel, at (704) 386-5384.

Sincerely,

Patrick M. Frawley
Director, Regulatory Relations

Attachment

EFT
#104

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Section 208.2, Definitions:

NationsBank supports the proposed definition of "authorized payment agent" in Section 208.2(b), and the related provision in Section 208.6(b)(1). These provisions will help ensure proper disbursement controls and adequate safety and soundness, without the necessity of redesigning any established agency procedures.

Section 208.4, Waivers:

NationsBank agrees that the proposed waiver categories are appropriate. In addition, we urge Treasury to establish another category of waivers for individuals, which would *not* require a certification to be completed by the recipient. This new type of waiver would enable either the financial institution (in most cases) or, if appropriate, the agency or Treasury, to designate individuals who because of their past or present actions should not be entitled to the privilege of an account. This proposed waiver category is intended to address the certainty that, even with a basic banking product perhaps accessible only by a plastic card, there will still be opportunities for fraudulent activity and other abuses directed at the financial institution and/or the agency. Such a waiver should be able to be imposed upon the recipient regardless of whether the account was opened voluntarily by that individual or provided by Treasury pursuant to these regulations. With respect to the latter type of accounts, it may be anticipated that financial institutions may be somewhat more lenient than under their normal standards for other types of accounts; but nonetheless, situations will undoubtedly occur where recipients cannot meet even those more lenient standards. This waiver also should be able to be imposed either prior to an account being opened, if the recipient's history is sufficient for such action at that time, or at any time after the account is opened, if closure is deemed advisable for reason of fraud or other abuse.

Alternatively, if for some reason Treasury is unwilling to give financial institutions the discretion we believe is necessary in this area, effectively mandating that the institutions do business with certain "high risk" customers, then Treasury should be willing to indemnify those institutions against fraud losses and related expenses.

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Section 208.5, Access to Account Provided by Treasury:

In response to Treasury's specific invitation to comment on this issue, NationsBank strongly agrees with the consumer organizations which have urged that Treasury-provided accounts be held only at federally insured financial institutions. The federal government should assure recipients of the safety of their payments throughout the entire process until the individuals actually withdraw the funds. These are payments issued by federal agencies, required to be placed into an account at an institution chosen by Treasury which the recipient has not personally selected, and to maintain confidence in the system the final step in the process should involve an account protected by federal deposit insurance.

NationsBank believes that Treasury's primary goal is to provide an account to "unbanked" recipients of federal payments with basic yet broad electronic access, at a reasonable cost, and with appropriate consumer protections. The competitive bidding process is the best way to achieve this goal. Competitive bids historically have resulted in creative and cost-effective solutions. To optimize the benefits of this process to recipients, agencies and Treasury, requirements should be limited to very basic minimums, allowing for bidders to present creative pricing solutions and to propose various options at incremental costs. Such options might be offered at either the product level or the recipient level, enabling Treasury and/or the recipient to identify the specific cost associated with any option, and to make the decision whether to utilize it.

Because NationsBank strongly believes in the wisdom of the above approach, whereby the bidding process would define most of the features of these accounts, we respectfully submit that we consider it counterproductive at this stage to offer comments in response to most of the questions posed by Treasury concerning potential specific account features. To maximize the creative options produced by the bidding process, bidders should be given maximum flexibility. It is virtually certain that any attempt in this proposed regulation or in the bid specifications to mandate account features beyond the most basic requirements, or to mandate pricing, will result in fewer bidders offering less creative and flexible solutions.

In response to one of Treasury's questions, NationsBank believes that broad geographic access will be important to many recipients. We further believe that such broad-based access is already available today to financial institution customers through ATM and point-of-sale transaction capabilities provided by established regional and national networks. Utilization of these existing networks should produce the most cost-effective access and should be favored over any proposal to establish a special network for the Treasury-provided accountholders. Such a network would create a substantial and unnecessary expense which likely would increase the costs of these accounts to recipients.

This does not mean that Treasury, the agencies, and certainly the individual financial institutions which are contemplating submitting bids should not give careful consideration to the subject of ATM capacity. Based on the experience with some state-administered programs, where in some cases service levels for existing customers of financial institutions have been dramatically affected, it cannot be assumed that the current ATM network infrastructure has the excess capacity to absorb these new transactions in all areas. Additional capacity may need to be added, and areas where transactions are highly concentrated could pose a particular challenge to ATM providers. Importantly, the incentive to add capacity likely would be diminished if pricing constraints were imposed, i.e., if revenues from these ATMs were lower than other potential locations, providers may be less inclined to place additional machines where they are most needed to serve recipients. Such an impact would be counter to Treasury's objective and should be avoided.

NationsBank also urges Treasury and the agencies to implement changes to spread the disbursement of federal payments more equally throughout the month, rather than concentrating them on a few selected days. This could dramatically reduce servicing and capacity issues for the account-providing financial institutions and all ATM providers, leading to lower costs.

NationsBank strongly believes it is important to avoid any requirement that bidders agree to provide physical servicing of these accounts beyond debit card access, such as access through teller windows. If such accounts can be effectively serviced without involving a branch network, which is likely the case with most if not all potential bidders, then recipients undoubtedly will benefit from lower costs. It should be left to each bidding institution as to whether it wishes to offer teller access, whether as an option at incremental cost or otherwise.

Similarly, each bidder should have the flexibility to determine whether it wishes to submit a bid which allows for other types of deposits beyond federal electronic payments, or other types of withdrawals such as access via paper checks. We feel particularly strongly that check access, which would significantly increase fraud risks, should not be mandated.

Finally, in the interest of keeping costs to recipients low, NationsBank urges Treasury to work with the Federal Reserve Board either to specifically exempt these accounts from the periodic statement requirements and perhaps other provisions of Regulation E, or to pursue other avenues of regulatory relief, e.g., by acknowledging that access to balance and transaction information via electronic means (such as telephone and ATMs) provides consumer protections which are adequate to comply with existing Reg E requirements. Alternatively, if Treasury were deemed to be the accountholder for all of these government-provided accounts, then they would be excluded from Reg E coverage as not being "consumer accounts."

Section 208.6, Account Requirements:

NationsBank agrees with Treasury's conclusion that Treasury's obligation is to assure access to a reasonably priced account only for "unbanked" recipients. As Treasury has indicated, there should not be widespread regulation of any fees on services voluntarily obtained by individuals from financial institutions. An increasing number of institutions are providing low cost checking accounts to meet the needs of government benefit recipients and others. Any attempt at price regulation could have multiple undesirable effects including discouraging institutions from offering these accounts, diminishing service levels, or forcing institutions to increase prices of other, non-regulated services.

As to the legislative mandate that Treasury ensure access to accounts at a "reasonable cost" for recipients who have not individually obtained them, we reiterate our position as stated in our comments under Section 208.5 that no regulatory attempt should be made to mandate what constitutes a "reasonable cost," but rather, Treasury should permit that concept to be defined through the competitive bidding process.

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Section 208.7, Agency Responsibilities:

Educating recipients will be an extremely important part of the overall process and one in which the agencies will play a leading role, with assistance from Treasury, the account providers, and financial institution industry groups. Careful coordination of informational efforts among all of these groups will help achieve optimal results.